

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO : U.S. ex rel.  
Ven-a-Care of The Florida : Judge Patti B. Saris  
Keys, Inc. :  
v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
- - - - -x Bowler

THOMAS A. SCULLY - VOLUME II

JULY 13, 2007

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(CAPTION CONTINUED)

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<p style="text-align: right;">Page 708</p> <p>1 generally, that with generic products, as a 2 general proposition, WAC prices over time 3 declined to reflect competition? 4 MR. NEAL: Object to the form. You can 5 answer. 6 A. I didn't know that. 7 Q. Did you know that to the extent some 8 drugs end up having high spreads it's because -- 9 some generic drugs -- end up with high spreads 10 it's because prices keep getting lower and lower 11 as there's more competition? 12 MR. NEAL: Objection. 13 MR. RIKLIN: Objection to form. 14 A. I was aware of that. 15 Q. So were you aware that -- that 16 increasing spreads were -- 17 A. But prices get lower and lower to the 18 providers, not to the government. 19 Q. Well, to the providers, in the sense 20 that the, for example, the WAC keeps declining? 21 A. Right. 22 Q. And AMPs would keep declining, as well;</p>	<p style="text-align: right;">Page 710</p> <p>1 is used to refer to the price at which a 2 pharmaceutical firm or a wholesaler sells a drug 3 to a retail customer, who then administers it to 4 a patient; do you see that? 5 A. Yes. 6 Q. That's not what AWP was viewed as, 7 that's not the view of CMS as to what AWP was, is 8 it? 9 MR. NEAL: Objection as to form. 10 BY MR. ESCOBAR: 11 Q. Is it? 12 MR. NEAL: This is not a 30 (b)(6), 13 this is not a 30 (b)(6) deposition. You can 14 answer. 15 A. No, I don't think that's what AWP is 16 commonly considered to be, I think that's an 17 inaccurate description. 18 Q. In fact, that's a completely inaccurate 19 statement of AWP; right? 20 MR. NEAL: Objection as to form. 21 A. I think it's probably a poor 22 description, yes.</p>
<p style="text-align: right;">Page 709</p> <p>1 right? 2 MR. NEAL: Objection to form. You can 3 answer. 4 BY MR. ESCOBAR: 5 Q. Well, that would be -- that would 6 generally be true; right? 7 MR. RIKLIN: Objection to form. 8 BY MR. ESCOBAR: 9 Q. And so the government would be able to 10 see that the life of a drug like Albuterol that 11 the WACs and the AMPs decline over time; right? 12 MR. RIKLIN: Objection to form. 13 MR. NEAL: I'll join in the objection. 14 You can answer. 15 A. Yes. 16 Q. Now, if you turn to page 13 of the 17 complaint, Exhibit Dey 028, just read to yourself 18 paragraph 40? 19 A. Yes. 20 Q. Okay. Now, this was a complaint that 21 was signed the 22nd day of August, 2006, and on 22 paragraph 40, in the first sentence, it says, AWP</p>	<p style="text-align: right;">Page 711</p> <p>1 Q. Because it's not accurate? 2 A. Yes. 3 MR. NEAL: Objection as to form. 4 BY MR. ESCOBAR: 5 Q. Now, you would think that -- well, 6 let's take the next one -- WAC is used to refer 7 to the price at which a pharmaceutical firm 8 typically sells a drug to wholesalers who will 9 then resell it to a retail customer; do you see 10 that? 11 A. Yes. 12 Q. And that's a description of what WAC 13 is, is also not accurate; is it? 14 MR. NEAL: Objection as to form. 15 A. Well, a little closer. 16 Q. But it's not accurate, is it? 17 MR. NEAL: Objection. 18 A. Probably not totally accurate. 19 Q. In fact, that sentence, where the 20 government describes in the complaint against Dey 21 what WAC is, this does not include the fact that 22 it's -- it lists price before discounts, which is</p>

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<p style="text-align: right;">Page 900</p> <p>1 document speaks for itself. 2 A. I don't know. I would have to read the 3 whole -- yeah, I'm not sure of the context it's 4 in. I'd -- 5 Q. Well, let's talk about paragraph 42. 6 The sentence reads that AWP is used to refer to 7 the price at which a pharmaceutical firm or a 8 wholesaler sells a drug to a retail customer, who 9 then administers it to a patient, to start with, 10 do you use average wholesale price to refer to 11 the price at which a firm sells a drug to a 12 wholesaler or a customer? 13 MR. GOBENA: Object to the form. 14 A. Do I -- do I have my government 15 context, I would say no. 16 Q. All right. Have you ever used average 17 wholesale price to refer to the price at which a 18 pharmaceutical firm or a wholesaler sells a drug 19 to a retail customer? 20 A. No. 21 MR. GOBENA: Object to the form. 22 BY MR. COOK:</p>	<p style="text-align: right;">Page 902</p> <p>1 Q. All right. But paragraph 42, in front 2 of you, certainly does not describe any way in 3 which the government has ever defined AWP; 4 correct? 5 MR. GOBENA: Object to the form. This 6 is not a 30(b)(6) witness on behalf of the 7 government. 8 MR. RIKLIN: Objection. 9 A. My experience is that -- that in my 10 terms with the government nobody looked at what 11 the price of what AWP would pay. 12 MR. COOK: I have no more questions. 13 Thank you. 14 MR. GOBENA: All right. We'll let go 15 of this witness. 16 THE VIDEOGRAPHER: The time is 5:00 -- 17 the time is 5:05 -- the time is 5:05 P.M. We're 18 going off the record, concluding tape number six, 19 and this days' testimony, and volume two of the 20 deposition of Thomas Scully in the matter of in 21 re Pharmaceutical Industry Average Wholesale 22 Price Litigation. This deposition contains five</p>
<p style="text-align: right;">Page 901</p> <p>1 Q. Have you ever heard anybody else use 2 AWP to refer to the price of which a 3 pharmaceutical firm or a wholesaler sells a drug 4 to a retail customer? 5 MR. GOBENA: Object to the form. 6 A. No. 7 Q. And when you talk about what average 8 wholesale price is supposed to be you're 9 referring to, I assume, and you can tell me if 10 I'm correct, the dictionary definition for the 11 words, average, wholesale, and price? 12 A. Yes. 13 Q. You're not referring to the manner in 14 which it's ever been used, commonly, in the 15 industry; correct? 16 MR. GOBENA: Object to the form. 17 MR. KELLEY: Objection to form. 18 A. Yes, the definition is the same as 19 average sales price or average manufacturers 20 price, you would think that -- there are a 21 million ways to implement them and to actually 22 define them. I mean, they're basic concepts.</p>	<p style="text-align: right;">Page 903</p> <p>1 tapes, or six tapes. 2 (Signature having not been waived, the 3 deposition of Thomas Scully was concluded at 5:06 4 P.M.) 5 6 7 8 9 10 11 12 ACKNOWLEDGMENT OF DEPONENT 13 I, Thomas Scully, do hereby acknowledge that I 14 have read and examined the foregoing testimony, and 15 the same is a true, correct and complete transcription 16 of the testimony given by me and any corrections 17 appear on the attached Errata sheet signed by me. 18 19 20 (DATE) (SIGNATURE) 21 22</p>

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